



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2016-0250]

RIN 1625-AA87

Security Zone; Tall-Ship CUAUHTEMOC; Thames River, New London Harbor, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary security zone around the Tall-Ship CUAUHTEMOC during its transit through the Long Island Sound Captain of the Port (COTP) Zone, and for the duration of its mooring on the Thames River in New London Harbor, New London, CT. This temporary final rule creates a 250-yard radius security zone encompassing all navigable waters around the Tall-Ship CUAUHTEMOC while in transit through Sector Long Island Sound's Captain of the Port (COTP) Zone, and a 100-yard radius temporary security zone while the vessel is anchored or moored in the Thames River in New London Harbor, New London, CT. This zone is needed to protect the Tall-Ship CUAUHTEMOC and its crew from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. Persons or vessels may not enter the security zone without permission of the COTP or a COTP designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until May 14, 2016. For the purposes of enforcement, actual notice will be used from May 1, 2016 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0250 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Jay TerVeen, Prevention Department, Coast Guard Sector Long Island Sound; telephone (203) 468-4446, e-mail [Jay.C.TerVeen@uscg.mil](mailto:Jay.C.TerVeen@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because an

NPRM would be impracticable and contrary to the public interest. Consequently, the Coast Guard did not have enough time to draft, publish, and receive public comment on this rulemaking via an NPRM and still publish a final rule before the event was scheduled to take place. Delaying this rulemaking by waiting for a comment period to run would also reduce the Coast Guard's ability to fulfill its statutory missions to protect and secure the ports and waterways of the United States.

Under 5 U.S.C. 553(d)(3), and for the same reasons as stated above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential security threats associated with having the Tall-Ship CUAUHEMOC in U.S. Waters.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. The Captain of the Port Long of Island Sound (COTP) has determined that vessels, within a 250-yard radius of the Tall-Ship CUAUHEMOC while it is transiting and a 100-yard radius while it is moored, pose a potential security risk.

### **IV. Discussion of the Rule**

This rule establishes a security zone from May 1, 2016 through May 14, 2016 for the Tall-Ship CUAUHEMOC. This zone is needed to protect the Tall-Ship CUAUHEMOC and its crew from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature.

This rule prevents vessels from entering, transiting, mooring, or anchoring within the security zone unless authorized by the COTP or designated representative. The Coast

Guard has determined that this security zone will not have a significant impact on vessel traffic due to its temporary nature, limited size, and the fact that vessels are allowed to transit the navigable waters outside of the security zone.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the Federal Register, the Local Notice to Mariners, and Broadcast Notice to Mariners.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Order and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Orders 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: 1) the enforcement of this security zone will be relatively short in duration; 2) persons or vessels desiring to enter the security zone may do so with permission from the COTP Sector LIS or a designated representative; 3) this security zone is designed in a way to limit impacts on vessel traffic, permitting vessels to

navigate in other portions of the waterway not designated as a security zone; and 4) the Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners to increase public awareness of this security zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security (DHS) Management Directive 023-01 and Commandant Instruction Manual (CIM) M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary security zone and is categorically excluded from further review under, paragraph 34(g) of figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under ADDRESSES .

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165 REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0250 to read as follows:

§ 165.T01-0250 Security Zone; Tall-Ship CUAUHTEMOC; Thames River, New London Harbor, New London, CT.

- (a) Location. The following areas are designated as security zones:

- (1) All navigable waters within the Sector Long Island Sound Captain of the Port (COTP) Zone, extending from the surface to the bottom, within a 250-yard radius of the Tall-Ship CUAUHTEMOC.
- (2) All navigable waters within the Thames River in New London Harbor, New London, CT, extending from the surface to the riverbed within a 100-yard radius of the Tall-Ship CUAUHTEMOC while it moored or anchored in the Thames River in New London Harbor, New London, CT.

- (b) Enforcement Period. This section will be enforced from May 1, 2016 through May 14, 2016, unless terminated sooner by the COTP.

- (c) Regulations. (1) The general regulations contained in 33 CFR 165.33 apply.



During the enforcement period, entry into, transit through, remaining within, mooring or anchoring within this temporary security zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representative.

(2) Vessel operators given permission to enter or operate in the temporary security zone must comply with all directions given to them by the COTP or the designated representatives. Those vessels may be required to be at anchor or moored to a waterfront facility.

(3) The “designated representative” is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his behalf. The on-scene representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

(4) Vessel operators desiring to enter or operate within the temporary security zone shall telephone the COTP at (203) 468-4401, or his designated representative via VHF channel 16 to obtain permission to do so.

Dated: April 19, 2016

E. J. Cubanski, III  
Captain, U. S. Coast Guard  
Captain of the Port Sector Long Island Sound

[FR Doc. 2016-11253 Filed: 5/12/2016 8:45 am; Publication Date: 5/13/2016]